IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No.1364 of 2006
To
FIRST APPEAL No.1373 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE J.M.PANCHAL
AND
HON'BLE SMT. JUSTICE ABHILASHA KUMARI

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1 Whether Reporters of Local Papers may be allowed to see the judgment?

2 To be referred to the Reporter or not?

3 Whether Their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?

5 Whether it is to be circulated to the Civil Judge?

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SPL.LAQ OFFICER & ANR. - Appellants
Versus
JASHUBHAI VISHABHAI - Respondents.

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Appearance :

First Appeal Nos.1364 to 1368 of 2006
MR SS SHAH, GP for Appellants.
MR GM AMIN for Respondents.

First Appeal Nos.1369 to 1373 of 2006
MS TANUJA N KACHCHHI, AGP for Appellants.
MR GM AMIN for Respondents.

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CORAM : HONOURABLE MR.JUSTICE J.M.PANCHAL
and
THE HON'BLE SMT. JUSTICE ABHILASHA KUMARI

Date : 21/12/2006

COMMON ORAL JUDGMENT

(Per: HONOURABLE MR.JUSTICE J.M.PANCHAL)

What is challenged in these appeals filed under Section 54 of the Land Acquisition Act, 1894 ("the Act" for short) read with Section 96 of the Code of Civil Procedure, 1908, is legality of common judgment and award dated January 31, 2003 rendered by the learned 3rd Joint Civil Judge (S.D.), Nadiad, in Land Reference Case Nos.176 of 1998 to 185 of 1998 by which the claimants have been awarded additional amount of compensation at the rate of Rs.49.50 Paise per square metre for their acquired lands over and above compensation offered to them by the Special Land Acquisition Officer at the rate of Rs.4.50 Paise per square metre, by his award dated January 22, 1996.

2. The Executive Engineer, R & B Division, Juna Sachivalaya, Ahmedabad, proposed to the State Government to acquire the lands of Village: Hariyala, Taluka: Matar, District: Kheda, for the public purpose of construction of National Highway No.8. On perusal of the said proposal, the State Government was satisfied that the lands of Village: Hariyala

specified in the said proposal were likely to be needed for the said public purpose. Therefore, a notification under Section 4 of the Act was issued, which was published in the official gazette on December 16, 1993. The landowners whose lands were sought to be acquired were served with the notices under Section 4 of the Act. On service of notices, they opposed the proposed acquisition. After considering their objections, a report under Section 5-A(2) of the Act was forwarded by the Special Land Acquisition Officer to the State Government. On consideration of the same, the State Government was satisfied that the lands of Village: Hariyala, which were specified in the notification under Section 4 of the Act published in the official gazette were needed for the public purpose of Construction of National Highway No.8. Therefore, a declaration under Section 6 of the Act was made, which was published in the official gazette on February 20, 1994. The interested persons were thereafter served with the notices for determination of compensation payable to them. The claimants appeared before the Special Land Acquisition Officer and claimed compensation at the

rate of Rs.100=00 per square metre. However, having regard to the materials placed before him, the Special Land Acquisition Officer, by his award dated January 22, 1996, offered compensation to the claimants at the rate of Rs.4.50 Paise per square metre. The claimants were of the opinion that the offer of compensation made by the Special Land Acquisition Officer was totally inadequate. Therefore, they submitted applications under Section 18 of the Act requiring the Special Land Acquisition Officer to refer their cases to the Court for the purpose of determination of just amount of compensation payable to them. Accordingly, references were made to the District Court, Nadiad, where they were registered as Land Reference Case Nos.176 of 1998 to 185 of 1998.

3. On behalf of the claimants, witness Jashubhai Visabhai Chavda was examined at Exhibit 11. In his examination-in-chief, the witness gave particulars of lands acquired such as; their location, fertility, patterns of crops, crops raised thereon, etc. It was claimed by him that the lands

acquired were highly fertile and in order to substantiate this claim, he produced 7/12 extracts relating to the lands acquired at Exhibits 14 to 21. What was claimed by the witness was that the lands acquired were situated near Village: Vansar and that the lands of Village: Vansar were similar to the lands acquired in the instant case. It was mentioned by the said witness that the lands of Village: Vansar were previously acquired for the public purpose of construction of National Highway No.8 with reference to which, the Reference Court had awarded compensation to the claimants at the rate of Rs.72/- per square metre, which award was modified by the High Court by holding that the claimants were entitled to Rs.60/- per square metre and, therefore, on the basis of the judgment of the High Court relating to the lands of Village: Vansar, the claimants should be awarded compensation at the rate of Rs.60/- per square metre. The witness further produced sale deed dated February 11, 1994 at Exhibit 22 relating to Survey No.27 of Village: Hariyala by which the land admeasuring 557.62 square metres was sold for a consideration of Rs.55,800=00 and claimed

that the claimants should be paid enhanced compensation on the basis of the said sale deed. It was also claimed by the witness that as water in abundance, was available for irrigation purpose, the claimants were raising different crops on the lands acquired and each claimant was earning net income of Rs.80,000=00 per year per *vigha* and, therefore, the claim made by the claimants that they should be awarded compensation at the rate of Rs.100=00 per square metre should be accepted.

This witness was cross-examined at length on behalf of the appellants. However, nothing substantial could be elicited.

4. On behalf of the appellants, no evidence was adduced at all.

5. On appreciation of the evidence led by the claimants, the Reference Court was of the opinion that the previous award of the Reference Court relating to the lands of Village: Vansar, as modified by the High Court, was a relevant piece of evidence

and furnished good guidance for the purpose of determining the market value of the lands acquired in the instant case. In the ultimate analysis, the Reference Court has awarded additional compensation to the claimants at the rate of Rs.49.50 Paise per square metre by the impugned award giving rise to these appeals.

6. This Court has heard Ms.Tanuja N. Kachchhi, learned Assistant Government Pleader for the appellants, and Mr.G.M.Amin, learned counsel for the original claimant(s) in each appeal at length and in great detail. This Court has also considered the paper-book supplied by the learned counsel for the claimants, which includes oral as well as documentary evidence adduced by the claimants before the Reference Court.

7. Though it was claimed by the witness for the claimants that each claimant was earning net income of Rs.80,000/- per year per *vigha* from the sale of agricultural produces, this Court finds that the said claim could not be substantiated by the claimants.

The record does not indicate that enhanced compensation was claimed by the claimants either on the basis of yield obtained from the acquired lands or on the basis of comparable sale instances. Two documents were relied upon for the purpose of claiming enhanced compensation. One was previous award of the Reference Court relating to the lands of Village: Vansar, as modified by the High Court, and second was sale deed dated February 11, 1994 relating to the land of this very village, which was produced at Exhibit 22. From the impugned award, it is evident that the Reference Court relied upon the previous award of the Reference Court relating to the lands of Village: Vansar, as modified by the High Court, for the purpose of granting additional compensation to the claimants. It was noticed by the Reference Court that no evidence was adduced by the claimants to establish that potentiality of the lands acquired in the instant case was the same as that of the lands, which were acquired from Village: Vansar. After considering the situation and potentiality of the lands acquired from Village: Hariyala, the Reference Court was of the opinion that 10% was required to be

deducted from the value of the lands determined by the previous award, as modified by the High Court. After noticing that the market value of the lands acquired from Village: Vansar was ascertained at Rs.60/- per square metre, the Reference Court deducted 10% therefrom and has awarded compensation to the claimants in all at the rate of Rs.54/- per square metre. This Court finds that the principles laid down by the Supreme Court for determination of compensation are well-established, which are as under:

> *The market value of the land at the date of the notification under Section 4(1) of the Act has to be ascertained with reference to different methods, which may be (1) opinion of experts; (2) the prices paid within a reasonable time in bona fide transactions of purchase or sale of the lands acquired or of the lands adjacent to those acquired and possessing similar advantages; and (3) a number of years' purchase of the actual or immediately prospective profits of the lands acquired.*

Here, in this case, sale deed Exhibit 22 relating to the land of this very village was

available on record and, therefore, in view of well-settled principles governing determination of the market value of the lands acquired, this Court is of the opinion that the Reference Court was not justified in placing reliance upon the previous award of the Reference Court relating to the lands of Village: Vansar for the purpose of determining the market value of the lands acquired in the instant case. The Reference Court has not held that Exhibit 22, which is a sale deed, was not a *bona fide* transaction. Therefore, the Reference Court was not justified in ignoring the same. If reasonable deduction could have been made from the market value as determined by the Reference Court relating to the lands of Village: Vansar, similar deduction could have been made from the price indicated by Exhibit 22.

8. On the facts and in the circumstances of the case, therefore, this Court proposes to ignore the previous award of the Reference Court relating to the lands of Village: Vansar, as modified by the High Court, for the purpose of determining the market

value of the lands acquired in the instant case and instead proposes to consider evidenciary value of Exhibit 22, which is a sale deed relating to the land of this very village. Exhibit 22 indicates Survey No.27 belonged to one Mr.Harisinh Kesarisinh Mandola. The land sold admeasured 557.62 square metres. Before effecting sale of the land, Mr.Harisinh Mandola had obtained necessary permission under Section 65 of the Bombay Land Revenue Code to use the said land for non-agricultural purpose. After obtaining non-agricultural permission, the owner, i.e. Mr.Harisinh Mandola, had sold the same to Chandrasinh Kandhusinh Parmar for a consideration of Rs.55,800/-. Thus, Exhibit 22 indicates that a piece of land admeasuring 557.62 square metres was sold at the rate of Rs.101.27 Paise per square metre on February 11, 1994. The well founded submission advanced by the learned Assistant Government Pleader for the appellants that in view of smallness of size of the land which was subject matter of Exhibit 22 in comparison to large tract of the lands acquired in the instant case as well as difference in nature of the lands, namely Exhibit 22 related to non-

agricultural land whereas in the instant case agricultural lands were acquired and that Exhibit 22 is post section 4 notification sale deed, appropriate deduction should be made, deserves acceptance. On the facts and in the circumstances of the case, this Court is of the opinion that interest of justice would be served, if 50% is deducted from the price of the land, which was sold by Exhibit 22. Thus, on appropriate deduction being made, this Court finds that the claimants on the basis of sale deed Exhibit 22 would be entitled to compensation in all at the rate of Rs.50/- per square metre and not in all at the rate of Rs.54/- per square metre, as held by the Reference Court. The appeals, therefore, filed by the appellants will have to be allowed in part.

For the foregoing reasons, the appeals partly succeed. The common judgment and award dated January 31, 2003 rendered by the learned 3rd Joint Civil Judge (S.D.), Nadiad, in Land Reference Case No.176 of 1998 to 185 of 1998 awarding compensation to the claimants in all at the rate of Rs.54/- per square metre is hereby modified and it is held that

the claimants would be entitled to in all Rs.50/- per square metre as compensation for their acquired lands. The other benefits which have been granted to the claimants by the impugned award are not interfered with at all and are hereby confirmed. The appeals are allowed to the extent indicated hereinabove. There shall be no orders as to costs. The Registry is directed to draw decree in terms of this judgment as early as possible.

[J.M.PANCHAL, J.]

[SMT. ABHILASHA KUMARI, J.]

Rajendra